

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-2241

United States Court of Appeals
For the Second Circuit.

MARY JAMES, SAMMIE DORIS WILLOUGHBY, LUCIA SCIPP,
on behalf of each and on behalf of all others similarly situated,
and the WYANDANCH COMMUNITY DEVELOPMENT COR-
PORATION,

Plaintiffs-Appellees,

against

AARON BARNETT, Supervisor of the Town of Babylon; VINCENT
MANNA, Councilman for the Town of Babylon; ROWLAND
SCOTT, Councilman for the Town of Babylon; SONDR
BACHETY, Councilwoman for the Town of Babylon; PATRICK
WATERS, Councilman for the Town of Babylon; RAY ALL-
MENDINGER, Councilman for the Town of Babylon; HAROLD
WITHERS, Councilman for the Town of Babylon; TOWN OF
BABYLON,

Defendants-Appellants,

LOUIS J. LEFKOWITZ, Attorney General of the State of New York,
Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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THE REPORTER COMPANY, INC., New York, N. Y. 10007-212 782-6978-1974

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UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

-----X
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behalf of each and on behalf of all others simi-
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DEVELOPMENT CORPORATION,

Plaintiffs-Appellees,

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AARON BARNETT, Supervisor of the Town of Babylon;
VINCENT MANNA, Councilman for the Town of Babylon;
ROWLAND SCOTT, Councilman for the Town of Babylon;
SONDRA BACHETY, Councilwoman for the Town of Baby-
lon; PATRICK WATERS, Councilman for the Town of
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of Babylon; HAROLD WITHERS, Councilman for the
Town of Babylon; TOWN OF BABYLON; LOUIS J. LEF-
KOWITZ, Attorney General of the State of New York,

Defendants-Appellants,
-----X

DOCKET ENTRIES.

DATE

3-18-74 Complaint filed. Summons issued.
4-15-74 Summons ret'd and filed. Executed.
5-15-74 ANSWER of def't Louis Lefkowitz filed.
5-21-74 ANSWER of def'ts filed.
6-3-74 Notice of Motion for a declaration of class
action, ret. June 21, 1974 filed, and Affidavit
of Service filed.

DOCKET ENTRIES.

DATE

6-3-74 Pltff's Memorandum of Law in Support of Motion for an order that suit may be maintained as a class action filed.

6-3-74 Notice of motion for a declaration of class action ret. 6-21-74 @ 10:00 A.M. and memorandum of law filed.

6-21-74 Before MISHLER, CH. J. - Case called - Motion adjd to 7/12/74 on consent

7-12-74 Before MISHLER, CH. J. - Case called for hearing on pltff's motion for a declaration of class action. Motion argued. Decision reserved.

8-5-74 Pltffs memorandum of law regarding the propriety and necessity of the convocation of a 2 Judge Court filed.

8-8-74 Letter of George C. Pratt to Judge Mishler dtd 7-17-74 re: class action motion filed.

8-8-74 Letter of Arthur Eisenberg to Judge Mishler dtd 7-30-74 re: motion for class action, etc filed.

8-8-74 Letter of Arthur Eisenberg to Judge Mishler dtd 8-2-74 re: transfer of action to Westbury, etc. filed.

8-8-74 Letter of George C. Pratt to Judge Mishler dtd 8-6-74 re: withdrawal of request for injunction relief filed.

8-8-74 Letter of George C. Pratt to Judge Mishler dtd 8-6-74 re: transfer to Westbury, etc. filed

8-8-74 Affidavit of George C. Pratt in opposition to pltffs' motion for an order determining that this action is maintainable as a class action. filed.

8-8-74 Memorandum of Town of Babylon in opposition to motion for an order that suit may be maintained as a class action filed.

DOCKET ENTRIES

DATE

- 8-16-74 By MICHLER, CH. J. - Memorandum of Decision and Order dated Aug. 15, 1974 filed that the action in this class is maintainable as a class action.
- 9-12-74 Notice of appeal filed. Duplicate mailed to C of A & pltff & deft. jn
- 10-9-74 Record on appeal certified and mailed to C of A.

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SUMMONS.

UNITED STATES DISTRICT COURT,
FOR THE EASTERN DISTRICT OF NEW YORK.

-----X
MARY JAMES, SAMMIE DORIS WILLOUGHBY, LUCIA SCIPP, on
behalf of each and on behalf of all others simi-
larly situated, and the WYANDANCH COMMUNITY
DEVELOPMENT CORPORATION,

Plaintiffs,

v.

AARON BARNETT, Supervisor of the Town of Babylon;
VINCENT MANNA, Councilman for the Town of Babylon;
ROWLAND SCOTT, Councilman for the Town of Babylon;
SONDRA BACHETY, Councilwoman for the Town of Baby-
lon; PATRICK WATERS, Councilman for the Town of
Babylon; RAY ALLMENDINGER, Councilman for the Town
of Babylon; HAROLD WITHERS, Councilman for the
Town of Babylon; TOWN OF BABYLON; LOUIS J. LEF-
KOWITZ, Attorney General of the State of New York,

Defendants.

74 C 434 MISHLER.

-----X
To the above named Defendant TOWN OF BABYLON:

You are hereby summoned and required to serve upon
Arthur Eisenberg, Lawrence Sager, Bruce Ennis, plain-
tiff's attorneys, whose address is New York Civil
Liberties Union, 84 Fifth Avenue, New York, N. Y. 10011,
an answer to the complaint which is herewith served upon

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SUMMONS

you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DATED: March 18, 1974

s/LEWIS ORGEL
Clerk of Court

s/MARC MILLER
Deputy Clerk

[Seal of Court]

COMPLAINT CLASS ACTION

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

I. Nature of Action

1. This action concerns the proposed construction of 182 low and moderate income housing units in the unincorporated hamlet of Wyandanch, in the Town of Babylon, New York. The proposed housing development was to have been a joint project of the New York State Urban Development Corporation, the Suffolk County Development Corporation, and the Wyandanch Community Development Corporation. Pursuant to a recently enacted amendment to the New York State Urban Development Corporation Act (Chapter 446, 1973 Laws of New York State), Town and Village governments are empowered to arbitrarily veto Urban Development Corporation proposals for the construction of housing units within their borders. On August 16, 1973, the Town Board of Babylon exercised this veto over the proposed Wyandanch housing units. In this action, Plaintiffs contend:

COMPLAINT CLASS ACTION

- A. That the veto of the Wyandanch Housing proposal by the Town Board of Babylon was racially discriminatory in purpose and effect, was unsupported by any legitimate governmental interest, and denied Plaintiffs and members of their class rights secured to them by the Fourteenth Amendment to the United States Constitution and various federal statutes intended to secure their civil rights; and
- B. That Chapter 446, 1973 Laws of New York State, insofar as it gives Towns and Villages the right to arbitrarily veto proposed projects of the New York State Urban Development Corporation violates the same constitutional and statutory provisions in its purpose, effect and operation.

Accordingly, plaintiffs seek declaratory and injunctive relief against the operation of the August 16, 1973 veto by the Town Board of Babylon and against the operation of Chapter 446, 1973 Laws of New York State, to the end of securing the construction of the proposed housing.

II. Jurisdiction

- 2. The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1331(a), 1343,

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2201 *et seq.*, and Title 42, United States Code, Section 3612, this suit being authorized by Title 42, United States Code Sections 1981, 1982, 1983, and 3601 *et seq.*, and the Fourteenth Amendment to the United States Constitution. This is an action for a declaratory judgment, appropriate equitable relief, and damages to prevent further abridgment and to redress past deprivation under color of state law, of rights and privileges and immunities secured to plaintiffs by the Constitution and Statutes of the United States, including the right to equal protection and due process of law under the Fourteenth Amendment to the United States Constitution and under Title 42, United States Code, 1982, 1983 and 3601 *et seq.*

III. Parties

A. Plaintiffs

3. Plaintiff Mary James is eighty-three years old and a black American citizen. Plaintiff James presently resides at 74 Parkway Boulevard, Wyandanch, New York, where she rents a home at 175 dollars per month. Plaintiff James is uncertain as to the length of time during which she will be able to continue to rent her present home because that home is in the process of being sold

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by the landlord. The primary source of Plaintiff James' income is social security, and as an elderly person, as a resident of Wyandanch, as well as an individual of low income, Mrs. James would qualify as a tenant in the proposed Wyandanch housing development and she desires to live in such a housing complex.

4. Plaintiff Sammie Doris Willoughby is forty-three years old and a black American citizen. Plaintiff Willoughby presently resides at 110 Lake Drive, Wyandanch, New York where she pays a rent of 160 dollars per month for a home where it is necessary to place plastic and paper around the window casements and the door in order to insulate the house from the cold, and where the back door has been boarded up and nonfunctional for the last three years because the landlord has failed to repair it. Plaintiff Willoughby is unemployed, a recipient of welfare payments, approximately 100 dollars of which provide for utilities and food and the remaining 160 dollars per month pays the rent. As a resident of Wyandanch and a welfare recipient, Plaintiff Willoughby would qualify as a tenant in the proposed Wyandanch housing development and she desires to live in the proposed housing complex.

5. Plaintiff Lucia Scipp is thirty-one and a black American citizen. Plaintiff Scipp presently resides at

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1684 Straight Path Road, Wyandanch, New York, where she is living with her mother and eighteen other persons in a severely overcrowded situation. Plaintiff Scipp is a welfare recipient and cannot find other suitable or even decent accommodations. Accordingly, she would qualify as a tenant in the proposed Wyandanch housing development and she desires to live in such a housing complex.

6. Plaintiff Wyandanch Community Development Corporation is a not-for-profit corporation dedicated to the solution of the acute social, economic and physical problems within Wyandanch, and, in particular, Wyandanch's housing deficiencies. The proposed Commonwealth Drive housing proposal was initiated and undertaken largely through the efforts of the Wyandanch Community Development Corporation.

7. Plaintiffs described in paragraphs 3 - 5 bring this proceeding as a class action pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all those similarly situated. The class is composed of elderly persons as well as persons of low and moderate income who are desperately in need of adequate and decent housing at reasonable rentals and who are or would be eligible for residence in the proposed Wyandanch housing development.

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8. As to the class described in the preceding paragraph: (1) the number of members in said class is in the hundreds and the class is therefore so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class, said common questions being whether the defendants' actions in vetoing the proposed Wyandanch housing development deprived elderly, low income, and moderate income citizens of rights secured by the Fourteenth Amendment to the United States Constitution and of rights secured by Title 42, United States Code, Sections 1981, 1983 and 3601 *et seq*; (3) the claims of plaintiffs are typical of the claims of the class; (4) the plaintiffs will fairly and adequately protect the interests of the class as they seek no individual benefit from this action but only a class benefit; (5) the defendants have acted or refused to act on grounds applicable generally to the class, thus making final injunctive relief appropriate with respect to the class as a whole; and (6) questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this suit.

9. With respect to Rule 23(b)(3), plaintiffs aver that the members of the class have no interest in

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individually controlling prosecution of separate actions relevant to the controversy involved here; that there is no other litigation already commenced concerning the controversy involved herein; that it is desirable to concentrate litigation of the claims in this matter in this forum in order to insure a quick resolution of this matter, thereby making possible the expeditious construction of desperately needed housing for the Wyandance community; and that there are no foreseeable difficulties likely to be encountered in the management of a class action.

B. Defendants

10. Defendant Aaron Barnett is and was during the pendency of the acts discussed in this complaint the Supervisor of the Town of Babylon. As Supervisor, and acting under color of Chapter 446, 1973 Laws of New York State, Defendant Barnett voted to veto the Commonwealth Drive housing proposal. Defendant Barnett is being sued in his official capacity and as an individual.

11. Defendant Vincent Manna is and was during the pendency of the acts discussed in this complaint Councilman for the Town of Babylon. As Councilman, defendant Manna, acting under color of Chapter 446, 1973 Laws of New York State, voted to veto the Commonwealth Drive housing proposal. Defendant Manna is being sued in his official capacity and as an individual.

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12. Defendant Rowland Scott was during the pendency of the acts discussed in this complaint a councilman for the Town of Babylon. As a Councilman, acting under color of Chapter 446, 1973 Laws of New York State, defendant Scott voted to veto the Commonwealth Drive housing proposal. Defendant Scott is being sued in his official capacity and as an individual.

13. Defendant Sondra Bachety is and was during the pendency of the acts discussed in this complaint a Councilwoman of the Town of Babylon. As Councilwoman, acting under color of Chapter 446, 1973 Laws of New York State, defendant Bachety voted in favor of the Commonwealth Drive housing development. Accordingly, defendant Bachety is being sued only in her official capacity.

14. Defendant Patrick Waters was during the pendency of the matters discussed in this complaint a Councilman of the Town of Babylon. As Councilman, acting under color of Chapter 446, 1973 Laws of New York State, defendant Waters voted in favor of the Commonwealth Drive housing proposal. Accordingly, defendant Waters is being sued in his official capacity.

15. Defendant Ray Allmendinger is presently a Councilman for the Town of Babylon. Defendant Allmendinger is being sued in his official capacity.

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16. Defendant Harold Withers is presently a Councilman for the Town of Babylon. Defendant Withers is being sued in his official capacity.

17. The Town of Babylon is being sued as the governmental entity under the aegis of which the veto of the Wyandanch housing proposal was accomplished.

18. Defendant Louis J. Lefkowitz is and was during the pendency of the acts discussed in this complaint the Attorney-General of the State of New York. As such, he is charged with enforcing the laws of the State of New York. Defendant Lefkowitz is being sued in his official capacity.

*IV. Incidents at Issue**A. The Wyandanch Community*

19. The community of Wyandanch is an unincorporated hamlet located within the Town of Babylon, in Suffolk County, New York. In the broadest reaches commonly attributed to the hamlet, it encompasses United States Census tracts numbers 1225, 1124.02, and 1227.01. This is an area with a population of 15,716, of which some 59.5% are black. The heart of the community, in which

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the housing project at issue here is proposed to be located, is census tract #1225. This tract is virtually a black ghetto with a population of 7,673, of which 83.9% are black.

20. The hamlet of Wyandanch is one of two predominantly black unincorporated communities located within the Town of Babylon, New York. The other black community is North Amityville. With these two exceptions, Babylon is an almost exclusively white, middle income suburb.

21. According to the 1970 Census, Wyandanch and North Amityville together contained 76 per cent of the black population of Babylon even though they contained only 13.6 per cent of the total population of the town.

22. In addition to being predominantly black, the populations of Wyandanch and North Amityville are disproportionately poor. These communities had the lowest median family incomes in 1970 of all the communities within Babylon.

23. In 1970, while only 5 per cent of Babylon's total population had incomes below the poverty level defined by the Census, 14 per cent of Wyandanch's population and 19 per cent of Wyandanch's black population had incomes below the poverty level. Approximately 81 per cent of all these

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persons in Wyandanch with incomes below the poverty level were black. Wyandanch is clearly a disproportionately black and poor enclave which is immediately surrounded by almost exclusively white communities within the Town of Babylon.

24. The housing conditions in Wyandanch are significantly deficient. Severe overcrowding is common, particularly among black persons and renters. A significant portion of the housing stock is delapidated and unsafe. Excessive rents prevail in many instances. In 1967, a survey of Wyandanch was undertaken by the Suffolk County Department of Health, together with the Babylon Town Building Department and the Welfare Department. Forty-six per cent of the homes surveyed were found to have sanitary code violations and nearly 25% of the homes were judged to be "deteriorating or delapidated". In addition, the Building Department reported numerous violations of the Babylon Town Code of Ordinances. The report concluded that the community of Wyandanch has a "severe housing problem".

25. The report singled out the Commonwealth Drive area as a section of the Wyandanch Community whose housing situation was particularly deficient. The 1970 Master Plan

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for the Town of Babylon likewise identified the Commonwealth Drive area as one of the most blighted within Wyandanch and called for redevelopment and rehabilitation.

B. *The Commonwealth Drive Residential Development Proposal*

26. Community concern with Wyandanch's economic and social problems precipitated a meeting in October of 1970 of numerous community organizations and agencies. The meeting resulted in the creation of a community-wide committee for the purpose of attacking acute social, economic and physical problems within Wyandanch, and, in particular, Wyandanch's housing deficiencies. Initially, this committee was called the Wyandanch Task Force. In March of 1971, however, the Wyandanch Task Force was incorporated as a not-for-profit-corporation, and renamed the Wyandanch Community Development Corporation (hereinafter WCDC).

27. In December of 1970, the Wyandanch Task Force received a grant of \$25,000 from the Suffolk Community Development Corporation. The Suffolk Community Development Corporation (hereinafter SCDC) is a local organization conceived and created by persons and institutions within Suffolk County who perceived a need for improved housing

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for the Suffolk County region. The grant from the SCDC was for the purpose of supporting a professional study of Wyandanch's housing situation.

28. The planning and consulting firm of Raymond, Parish and Pine was retained to undertake this study. In May of 1971, the firm submitted its completed report to the WCDC. The report documented the desperate need for "new decent housing. . .at rents that Wyandanch residents can afford" and recommended that housing for low and moderate income families be built as quickly as possible.

29. In May of 1971 the WCDC submitted the Raymond, Parish and Pine study to the Babylon Town Board for suggestions and recommendations. In a letter of June 9, 1971, the Board responded, indicating that it was "favorably impressed and pleased with the progress [WCDC] was making" (a copy of this letter is attached hereto as Exhibit I). Between June and September of 1971, representatives of the WCDC communicated by letter and in person with members of the Babylon Town Board in order to keep the Town Board informed of its progress.

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30. In September of 1971, Reverend David Rooks, the Chairman of the WCDC, informed Aaron Barnett, Supervisor of the Town of Babylon, that WCDC's general intention was to build approximately 200 units of housing on an approximately twelve acre site within the Commonwealth Drive area of Wyandanch. Reverend Rooks further informed Mr. Barnett that the New York State Urban Development Corporation and the SCDC, upon the invitation of the WCDC, had agreed to participate in the housing program, and that the area in which the housing complex was to be built was composed primarily of vacant land, divided into small parcels owned by a considerable number of individual owners. It was indicated that, if necessary, the New York State Urban Development Corporation could use its power of eminent domain to acquire the necessary land.

31. On September 29, 1971, Supervisor Barnett wrote to Reverend Rooks on behalf of the Babylon Town Board. The letter announced that the WCDC proposal "in no way conflicts with any present plans within the Town of Babylon." It further indicated the Board's concurrence with the involvement of the Urban Development Corporation and with the proposed use of condemnation where required for the acquisition of the necessary land. (A copy of this letter is appended hereto as Exhibit II).

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32. In November of 1971, the Urban Development Corporation, the WCDC, and the SCDC executed a letter of agreement setting out their mutual intention to cooperate in the development of housing and related facilities in Wyandanch.

33. Shortly after the execution of the letter of agreement, a specific site was selected for the proposed housing complex in the Commonwealth Drive Area. The selected site was composed of 11.7 acres of flat land in close proximity to a public school, shopping area, and public transportation. It was and is presently zoned for single family residences. This site is regarded as nearly ideal for the proposed housing.

34. The architectural firm of Gindele and Johnson was retained for the purpose of designing the proposed housing. Architects in the firm met numerous times with members of the WCDC and with Wyandanch community residents generally. The design of what became designated the Commonwealth Drive Residential Development Proposal was thus evolved in close cooperation with the Wyandanch community. This design, as amplified by subsequent agreements among the Urban Development Corporation, the WCDC and the SCDC, includes the following elements:

COMPLAINT CLASS ACTION

A. It is proposed that 182 units be built on the site, ranging in size from efficiency units to five bedroom apartments.

B. The project is designed as one and two story apartments and townhouses, divided into small clusters. In all, only 19% of the site will be built upon. Most of the land will be reserved for open green spaces with allocations for play areas and parking spaces. Natural aspects of the site are to be preserved wherever possible, and substantial additional landscaping is provided for.

C. All 182 units are to be allocated to low and moderate income families and for the elderly. Priorities on the apartments are to be given in the following manner. First, to residents of Wyandanch who have been displaced by governmental condemnation proceedings. Second, to residents of Wyandanch who served in the military during the pendency of the Vietnam War. Third, to residents of Wyandanch now living in unsound, unsafe and sub-standard housing. Fourth, to other residents of Wyandanch. Fifth, to residents of Babylon who

COMPLAINT CLASS ACTION

reside without Wyandanch. Sixth, to residents of other portions of Suffolk County. Seventh, to residents from outside Suffolk County.

D. A sewage treatment plant is to be designed by the engineering firm of Allen and Grant; it will service the proposed residential complex and other housing extant in the area. Dry wells are to be installed for storm water run-off. As per the request of the Town of Babylon Highway Department, storm sewer lines will be installed in some streets.

35. The engineering firm of Allen and Grant tested the public water lines adjacent to the proposed building site and concluded that there would be adequate water pressure to serve and protect the proposed residential development as well as the housing presently existing in the area. The Suffolk County Water Authority concurred in this finding.

36. Pursuant to the New York Urban Development Corporation Act, the Commonwealth Drive Residential proposal was submitted to the Board of Directors of the Urban Development Corporation and was approved by that body on

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September 20, 1972. Subsequently the Urban Development Corporation complied with the various formalities prescribed by statute; these included filing a copy of the proposal with the town of Babylon, serving notice of this filing, and noticing and convening a public hearing to consider the proposal.

37. On July 26, 1973, the statutorily prescribed public hearing was conducted by the Urban Development Corporation. At this hearing, an overwhelming majority of the residents of the Wyandanch community supported the proposed housing development.

C. *The Veto by the Town Board of Babylon*

38. On August 16, 1973, by a vote of 3 to 2, the Babylon Town Board voted to formally disapprove the Commonwealth Drive Residential Development Proposal. In so doing it was exercising the arbitrary local veto power over Urban Development Corporation projects provided by the recent amendment to the New York Urban Development Corporation Act, Chapter 446 of the 1973 Laws of New York. (See paragraph 56, *infra*.)

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39. This decision is sharply inconsistent with the Town Board's continuing pattern of approving multi-family housing developments for middle income white residents. As recently as June 14, 1973, the Town Board of Babylon approved without objection plans to build a 350 unit housing complex for middle income persons in the predominantly white community of Deer Park, which is immediately adjacent to Wyandanch.

40. No sound planning interest or other legitimate interest of government supported the decision of the Town Board to veto the housing proposal, and the Board was not acting on the basis of any perceived planning interest or legitimate interest of government.

41. No new information, policy or plan suggesting the undesireability of the Commonwealth Drive Residential Development Proposal came to the Babylon Town Board's attention between the time of its June 9, 1971 letter generally assenting to the plan to build housing in the Commonwealth Drive area and its disapproval of the proposal on August 16, 1973.

42. Between October 1972 and the August 16, 1973 vote by the Town Board of Babylon to disapprove the proposed housing, there was an extensive campaign carried on by white residents in the Town of Babylon to secure the

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defeat of the proposal. This opposition was prompted by the fear that the proposed housing would result in the ingress of additional black citizens and citizens of lesser economic means into the Town of Babylon.

43. The decision of the Babylon Town Board to veto the Commonwealth Drive Residential Development Proposal was a direct response to the public opposition set forth in paragraph 42, and to the fears upon which that opposition was based.

44. The effect of the veto of the Commonwealth Drive Residential Development Proposal by the Babylon Town Board is to exacerbate and to perpetuate the already deplorable housing conditions within the hamlet of Wyandanch, and thus to deny the black citizens of Wyandanch an opportunity to secure minimally decent housing.

45. In both its purpose and its effect the decision of the Town Board of Babylon to *formally* disapprove the Commonwealth Drive Residential Development Proposal is racially and economically discriminatory.

D. *The Urban Development Corporation*

46. In April of 1968, the New York State Urban Development Corporation (hereinafter "UDC") was created, pursuant to the New York State Urban Development

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Corporation Act, as a public benefit corporation and governmental agency. Among its central purposes are the development and financing of housing for low, moderate and middle-income families and the promotion of equal housing opportunities for racial minorities. To this end, the UDC uses a variety of Federal and State assistance programs.

47. To additionally assist in the implementation of UDC housing programs, Section 16(3) of the New York State Urban Development Corporation Act, as originally enacted in 1968, conferred upon the UDC the power to disregard local laws, ordinances, regulations, or codes when "in the discretion of the [UDC] such compliance is not feasible or practicable." In practice, this override power has been used almost exclusively with the consent and concurrence of the local municipality merely as an instrument to expedite the development of housing; UDC projects have typically been executed with the active cooperation and support of local officials.

48. In its efforts to help alleviate the need for low and moderate income housing within New York State, it had become the policy of UDC that "metropolitan housing problems cannot be solved entirely in the cities."

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Accordingly, while the primary thrust of UDC activities has been in the urban areas, the UDC has attempted to build modest amounts of low and moderate income housing in suburban areas.

E. *The "Nine-Towns" Proposal and the Legislative Response: the Local Veto Power*

49. In January of 1972, UDC announced its plans to build 900 units of low and moderate income housing in Westchester County. Under this program, approximately 100 units were to be built in each of nine Westchester towns. This program was a modest initial response to an estimated county-wide need of 92,000 additional housing units by 1980. A substantial amount of this projected shortage involved housing for low and moderate income persons.

50. The "Nine-Towns" proposal triggered a massive campaign of opposition to the UDC which was most formidably manifested in legislative efforts to reduce UDC's power and authority.

51. Between January 1972 and May 1973 several bills were introduced in the New York Legislature which sought to eliminate UDC's ability to override local zoning

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restrictions. Indeed, during the 1972 session of the Legislature, Assembly Bill Number 650 was introduced with the specific design and purpose of requiring that UDC projects be compelled to comply with zoning ordinances and regulations of the municipality in which such projects were to be located. Assembly Bill Number 650 was passed by both houses of the State Legislature, but on or about May 22, 1972 was vetoed by former New York Governor Nelson Rockefeller. In his veto message of May 22, Governor Rockefeller announced his disapproval of the bill "[b]ecause the measure would weaken one of the most effective institutions available to meet the housing and economic needs of the State." (See exhibit III).

52. In March of 1973, Assembly Bill Number 7323-A was introduced in the New York State Assembly by a coalition of legislators headed by the delegation from Westchester County. This bill, by its terms, conferred upon towns and villages the power to veto UDC housing projects within their borders. As introduced, the bill specifically exempted from this veto power certain UDC projects that had already been initiated. Thus, in the bill as initially introduced, the proposed Wyandanch

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housing complex was included in this exemption and was not to be subject to the veto of the Town of Babylon. (See exhibit IV, appended hereto).

53. Because the Wyandanch housing proposals were specifically exempted from the legislation discussed in the preceding paragraph, persons and organizations opposed to the UDC housing program in Wyandanch attempted to exert political pressure to have the Wyandanch housing complex subjected to the veto of the Babylon Town Board.

54. A neighborhood association calling itself the Babylon Citizens for Home Rule became the prime organizational basis for the opponents of the Wyandanch-UDC housing proposal. Between May 19 and May 23, 1973, a campaign of opposition to the Wyandanch housing involving the picketing of and sending telegrams to various state legislators was initiated largely at the direction of the Babylon Citizens for Home Rule.

55. The campaign described in the preceding paragraph resulted in an amendment to Assembly Bill Number 7323-A which withdrew the specific exemption for the Wyandanch project. The amendment, which allowed the Town of Babylon to review and veto the Wyandanch housing proposal, was

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passed by the Legislature. And Assembly Bill Number 7323-B as amended was enacted, as Chapter 446, 1973 Laws of New York. (See exhibit V, appended hereto).

56. As enacted, Chapter 446, 1973 Laws of New York provides, in part, that within thirty days of the public hearing which UDC is required to hold before commencing any development, the local governing body of any town or village where a development is proposed may file a written objection with the UDC; such an objection operates as a decisive veto of the proposed development.

57. Furthermore, as enacted, Chapter 446, 1973 Laws of New York, does not require that a town or village give any reasons for its disapproval of a UDC development and does not prescribe any standards whatsoever to govern a local decision to exercise the veto power. The legislation thus disfavors UDC projects even as against those of private developers. Private developments are subject only to duly considered and enacted zoning restraints, while UDC projects can be summarily and unreflectively vetoed.

58. Furthermore, as enacted, Chapter 446, 1973 Laws of New York, confers this aforementioned veto power upon town and village governments but not upon city governments.

COMPLAINT CLASS ACTION

(A copy of Chapter 446, 1973 Laws of New York is appended hereto as exhibit VI).

59. The opposition to the "Nine-towns" program and the derivative campaign to strip the UDC of its powers to override local land use decisions--as described in paragraphs 49-52 of this complaint--was founded on a desire by some citizens in Westchester County to exclude low and moderate income members of racial minorities from residence in their communities.

60. The opposition to the exemption of Wyandanch from proposed legislation which would strip the UDC of its powers to override local land use decisions--as described in paragraphs 53-55 of this complaint--was founded on a desire by some residents of the Town of Babylon to exclude low and moderate income members of racial minorities from residence in their community.

61. The adoption of Chapter 446, 1973 Laws of New York by the New York State Legislature was in direct response to the campaigns of opposition to the Nine Towns and Wyandanch housing proposals undertaken by residents of Westchester County and the Town of Babylon. The deletion of the exemption of Wyandanch from the terms of Assembly Bill 7323-A was in direct response to the

COMPLAINT CLASS ACTION

campaign of opposition by residents of the Town of Babylon to the Wyandanch proposal.

62. The purpose and effect of Chapter 446, 1973 Laws of New York, is to drastically reduce the capacity of the UDC to provide decent housing for low and moderate income persons and to promote equal housing opportunities for racial minorities.

63. In purpose and effect, the adoption of Chapter 446, 1973 Laws of New York is racially discriminatory.

V. *Claims*

64. The decision of the Town Board of Babylon to disapprove the Commonwealth Drive Residential Development Proposal is racially discriminatory in its purpose and effect. It denies plaintiffs and members of their class rights secured to them by the Fourteenth Amendment and by Title 42 of the United States Code, sections 1981, 1982, 1983 and 3601 *et seq.*

65. The decision of the Town Board of Babylon to disapprove the Commonwealth Drive Residential Development Proposal discriminates against the poor. It denies plaintiffs and members of their class rights secured to them by the Fourteenth Amendment and Title 42 of the United States Code, Section 1983.

COMPLAINT CLASS ACTION

66. The decision of the Town Board of Babylon to disapprove the Commonwealth Drive Residential Development Proposal denies plaintiffs and members of their class the right to freely migrate and settle, as secured to them by the Fourteenth Amendment and the Interstate Commerce Clauses of the United States Constitution and by Title 42 of the United States Code, Section 1983.

67. The decision of the Town Board of Babylon to disapprove the Commonwealth Drive Residential Proposal is arbitrary and capricious, and is unsupported by any legitimate governmental interest. It denies plaintiffs, and members of their class, rights secured to them by the Fourteenth Amendment and Title 42 of the United States Code, Section 1983.

68. Chapter 446, 1973 Laws of New York, is racially discriminatory in its purpose and effect. It denies plaintiffs and members of their class rights secured to them by the Fourteenth Amendment and by Title 42 of the United States Code, Sections 1981, 1982, 1983 and 3601 *et seq.*

COMPLAINT CLASS ACTION

69. Chapter 446, 1973 Laws of New York, discriminates against the poor in its purpose and effect. It denies plaintiffs and members of their class rights secured to them by the Fourteenth Amendment and by Title 42 of the United States Code, Section 1983.

VI. *Prayer For Relief*

WHEREFORE, the Plaintiffs, pray for the following relief:

1) A judgment, declaring:

A.) That the decision of the Town Board of Babylon to disapprove the Commonwealth Drive Residential Proposal is unlawful, and ineffective as a bar to the construction of the proposed housing, and

B.) That the provision within Chapter 446, 1973 Laws of New York, which amended Section 15 of the New York State Urban Development Corporation Act is unconstitutional, and ineffective as a bar to the construction of the proposed housing.

2) An order, enjoining defendants, Barnett, Manna, Scott, Bachety, Waters, Allmendinger, their agents and successors in office from interfering with the construction of the Commonwealth Drive Residential Development.

COMPLAINT CLASS ACTION

3) An order, enjoining defendant Lefkowitz, his agents and successors in office from enforcing that provision of Chapter 446, 1973 Laws of New York, which amends Section 15 of the New York State Urban Development Corporation Act, in a manner which will prevent the construction of the Commonwealth Drive Residential Development.

4) An order, convening a District Court of three judges, pursuant to 28 U.S.C., §§2281 and 2284.

5) Such further relief as the Court finds just and proper.

Respectfully submitted,

ARTHUR EISENBERG
LAWRENCE G. SAGER
BRUCE J. ENNIS
New York Civil Liberties Union
84 Fifth Avenue
New York, N.Y. 10011
(212) 924-7800

RICHARD BELLMAN
CHRISTOPHER JENSEN
Suburban Action Institute
150 White Plains Road
Tarrytown, N.Y. 10591
(914) 631-8321

EXHIBIT I, ANNEXED TO COMPLAINT.

Town of Babylon

FOUNDED IN 1657

AARON BARNETT, SUPERVISOR

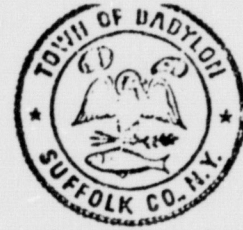
COUNCILMEN

SONDRA BACHETY

PATRICK B. WATERS

FRANK A. SCHAEFFER

ROWLAND SCOTT



200 EAST SUNRISE HIGHWAY, LINDENHURST, N. Y. 11757

TU 8.7300

June 9, 1971

The Rev. David Rooks, Chairman
 Wyandanch Community Development Corporation
 P.O. Box 329
 Wyandanch, N.Y. 11798

Dear Reverend Rooks:

At the meetings between the representatives of your organization and members of the Babylon Town Board, we were favorably impressed and pleased with the progress you are making in your self-help program.

We would greatly appreciate it if you would continue to keep us advised from time to time with up-dated reports of your activities and progress.

Sincerely,

Aaron Barnett
 Supervisor

Councilman, Sondra M. Bachety

Councilman Frank A. Schaeffer

Councilman Rowland Scott

Councilman Patrick B. Waters

EXHIBIT II, ANNEXED TO COMPLAINT.

Town of Babylon

FOUNDED IN 1657

AARON BARNETT, SUPERVISOR

COUNCILMEN

DORA BACHETY

PATRICK B. WATERS

ANK A. SCHAEFFER

ROWLAND SCOTT



200 EAST SUNRISE HIGHWAY, LINDENHURST, N. Y. 11757

TU 8-7300

September 29, 1971

Rev. David Rooks, Chairman
Wyandanch Community Development Corp.
P.O. Box 329
Wyandanch, N.Y. 11798

Dear Sir:

The Babylon Town Board wishes again to thank you for the opportunity to review your planning efforts within Wyandanch.

Based on the understanding of your letter of September 24th, we concur in the housing program outlined within the approximate twelve (12) acre site in and around Commonwealth Drive. This Commonwealth Housing Proposal in no way conflicts with any present plans within the Town of Babylon.

We understand the difficulties which may be experienced concerning the land acquisition of the numerous small parcels within the proposed twelve (12) acre Commonwealth housing site. We concur in your approach of negotiation for the land in question and the use of condemnation as required.

We further recognize that the New York State Urban Development Corporation will assist in the implementation of this housing proposal of approximately 190 units of housing.

The Town Board wishes to congratulate you on your fine work.

Sincerely,

Aaron Barnett
Aaron Barnett
Supervisor

AB:em

cc: Mr. Wilbur Klatsky
Suffolk Community Development Corp.

EXHIBIT III, ANNEXED TO COMPLAINT.

STATE OF NEW YORK

650

1971-1972 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 1971

Introduced by Mr. SUCHIN—read once and referred to the
Committee on Corporations, Authorities and Commissions

AN ACT

To amend the New York state urban development and research
corporation act and the New York state urban development
corporation act, in relation to compliance with zoning ordi-
nances and regulations

*The People of the State of New York, represented in Senate and
Assembly, do enact as follows:*

1 Section 1. Chapter one hundred seventy-three of the laws of
2 nineteen hundred sixty eight, constituting the New York state
3 urban development and research corporation act, is hereby amended
4 by adding thereto a new section, to be section seven-a, to read as
5 follows:

6 § 7-a. *Compliance with zoning ordinances and regulations. Not-*
7 *withstanding any provision of law to the contrary, the corporation*
8 *shall not initiate any project in any municipality until and unless*

Exception. Cities to which the act applies by Chapter 111 of the laws of 1968 shall be excepted.

EXHIBIT III, ANNEXED TO COMPLAINT

2

1 *such project complies with the zoning ordinances and regulations*
2 *of the applicable municipality.*

3 § 2. Chapter one hundred seventy-four of the laws of nineteen
4 hundred sixty-eight, constituting the New York state urban devel-
5 opment corporation act, is hereby amended by adding thereto a
6 new section, to be section five-a, to read as follows:

7 § 5-a. *Compliance with zoning ordinances and regulations. Not-*
8 *withstanding any provision of law to the contrary, the corporation*
9 *shall not initiate any project in any municipality until and unless*
10 *such project complies with the zoning ordinances and regulations*
11 *of the applicable municipality.*

12 § 3. This act shall take effect immediately.

EXHIBIT III, ANNEXED TO COMPLAINT

STATE OF NEW YORK
EXECUTIVE CHAMBER
NELSON A. ROCKEFELLER, GOVERNOR

Ronald Maione, Press Secretary
518-474-6418 (Albany); 212-362-7000 (N.Y.C.)

FOR RELEASE:
A.M., THURSDAY
MAY 25, 1972

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

May 22, 1972

MEMORANDUM filed with Assembly Bill Number 650, entitled:

#29 "AN ACT to amend the New York state urban development and research corporation act and the New York state urban development corporation act, in relation to compliance with zoning ordinances and regulations"

NOT APPROVED

The bill would require that projects of the New York State Urban Development Corporation and of the New York State Urban Development and Research Corporation comply with the zoning ordinances and regulations of the municipality in which such projects are to be located.

Under existing law (chapters 174 and 173 of the Laws of 1968, respectively), projects of the UDC, and similarly of the UDRC, need not comply with local zoning ordinances and regulations if the respective corporation finds by a two-thirds vote of its board of directors, that such compliance is not feasible or practicable.

The UDC and the UDRC were created in 1968 to help solve critical problems confronting the State and its municipalities in the areas of housing, redevelopment of blighted areas, industrial, commercial and public facilities. The two corporations were given the power to "override" local zoning ordinances and regulations in order to overcome restrictive local standards that have often impeded urgently needed development or have rendered it prohibitively expensive. This grant of power reaffirmed the traditional immunity that instrumentalities of the State have enjoyed when carrying out State purposes.

Close to \$1 billion worth of projects have been completed or placed under construction since 1968. And there is no evidence that the corporations have exercised these powers improperly or injudiciously in building up an impressive record. Nonetheless, the problems that led to the creation of these corporations persist.

Among those urging disapproval of the bill are the Community Service Society, the Urban League of Westchester County and the Mayor of Albany.

Because the measure would weaken one of the most effective institutions available to meet the housing and economic needs of the State, it should be disapproved.

The bill is disapproved.

(Signed) NELSON A. ROCKEFELLER

EXHIBIT IV, ANNEXED TO COMPLAINT.

STATE OF NEW YORK

R. R. No. 187

7323—A

1973-1974 Regular Sessions

IN ASSEMBLY

March 6, 1973

Introduced by Mr. SUCHIN—Multi-Sponsored by—Messrs. BIONDO, BURNS, STEPHENS, MANNIX, MEYER, HERBST, LEVY, HEALEY, STEINFELDT, GRUNE, BETROS, BURROWS, ROSS, HENDERSON—read once and referred to the Committee on Rules—amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT

To amend the New York state urban development corporation act, in relation to disapproval of residential projects by local governing bodies, increasing the bond authorization of the New York state urban development corporation and making an appropriation for losses incurred by the corporation in discontinuing projects

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Statement of purpose and intent. The federal govern-
- 2 ment has recently imposed a temporary moratorium on housing
- 3 subsidies while various proposed revisions of national housing policy
- 4 are being reviewed. This act is adopted in recognition of the tem-

EXPLANATION — Matter in *italics* is new; matter in brackets [] is old law to be omitted.

EXHIBIT IV, ANNEXED TO COMPLAINT

A—7323-A

2.

1 porary curtailment in federal subsidies and the uncertain avail-
2 ability of such assistance in the future.

3 § 2. Section three of section one of chapter one hundred seventy-
4 four of the laws of nineteen hundred sixty-eight, constituting the
5 New York state urban development corporation act, is hereby
6 amended by adding thereto a new subdivision to be subdivision six-
7 teen, to read as follows:

8 (16) "*New community.*" *A plan or undertaking for the devel-*
9 *opment of housing together with such civic, industrial and com-*
10 *mercial facilities and other ancillary facilities as the corporation*
11 *may determine necessary, including the implementation thereof*
12 *through one or more projects of the corporation and through such*
13 *participation by private enterprise as may be necessary or desirable*
14 *to carry out the development of such new community.*

15 § 3. Section fifteen of such act is hereby amended by adding
16 thereto a new subdivision, to be subdivision five, to read as follows:

17 (5) *Notwithstanding any inconsistent provision of this act or of*
18 *any general or special law, no plan for a proposed residential*
19 *project in a town or incorporated village which has not been*
20 *affirmed by the corporation prior to May first, nineteen hundred*
21 *seventy-three, shall be affirmed if, within thirty days after the*
22 *public hearing held pursuant to subdivision two of section sixteen*
23 *of this act or within thirty days after June first, nineteen hundred*
24 *seventy-three, whichever date is later, the local governing body*
25 *of such town or village submits in writing to the corporation formal*
26 *objections to the proposed residential project, unless and until such*

EXHIBIT IV, ANNEXED TO COMPLAINT

A-7323-A

3

1 objections are withdrawn and subject to the following conditions
2 and limitations:

3 (a) The foregoing shall not apply to residential projects initiated
4 after June first, nineteen hundred seventy-three, if such local gov-
5 erning body has, prior to submission, either approved such plan or
6 executed any agreement with the corporation relating to such plan
7 upon which the corporation has relied in authorizing expenditures
8 of funds or contracts, unless such town or village reimburses the
9 corporation for all of its expenditures and indemnifies the corpora-
10 tion for liabilities ensuing from cancellation of any contract, net of
11 the proceeds of any resale of property acquired by the corporation
12 for such project.

13 (b) The corporation may affirm, in any event, plans for residen-
14 tial projects in the new community known as Audubon, in the town
15 of Amherst, county of Erie or in the new community known as
16 Lysander New Community, in the town of Lysander, county of
17 Onondaga, or a residential project in the community of Wyandanch,
18 in the town of Babylon, county of Suffolk, and the provisions of
19 this first paragraph of this subdivision shall not be applicable to
20 any of such projects.

21 § 4. Section eighteen of such act, as last amended by chapter
22 three hundred seventy-seven of the laws of nineteen hundred
23 seventy-two, is hereby amended to read as follows:

24 § 18. Bond authorization. The corporation shall not issue bonds
25 and notes in an aggregate principal amount exceeding ~~one~~ two
26 billion ~~five hundred million~~ dollars, excluding bonds and notes
27 issued to refund outstanding bonds and notes.

EXHIBIT IV, ANNEXED TO COMPLAINT

A-7323-A

6

- 1 § 5. The sum of three million two hundred thousand dollars
2 (\$3,200,000) or so much thereof as may be necessary is hereby
3 appropriated from the capital construction fund to the New York
4 state urban development corporation for reimbursement to such
5 corporation of any actual net cost incurred by such corporation
6 with respect to residential projects which may be terminated. The
7 moneys hereby appropriated shall be available for such reimburse-
8 ments in accordance with a certificate of approval of availability
9 issued by the director of the budget and filed with the state comp-
10 troller, chairman of the senate finance committee and the chairman
11 of the ways and means committee.
12 § 6. This act shall take effect immediately.

EXHIBIT V, ANNEXED TO COMPLAINT

STATE OF NEW YORK

R. R. No. 187

7323—B

1973-1974 Regular Sessions

IN ASSEMBLY

March 6, 1973

Introduced by Mr. SUCHIN—Multi-Sponsored by—Messrs. BIONDO, BURNS, STEPHENS, MANNIX, MEYER, HERBST, LEVY, HEALEY, STEINFELDT, GRUNE, BETROS, BURROWS, ROSS, HENDERSON, LEVINE—read once and referred to the Committee on Rules—amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading—amended on the special order of third reading, ordered reprinted as amended retaining its place on the special order of third reading

AN ACT

To amend the New York state urban development corporation act, in relation to disapproval of residential projects by local governing bodies, increasing the bond authorization of the New York state urban development corporation and making an appropriation for losses incurred by the corporation in discontinuing projects

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Statement of purpose and intent. The federal govern-
- 2 ment has recently imposed a temporary moratorium on housing
- 3 subsidies while various proposed revisions of national housing policy
- 4 are being reviewed. This act is adopted in recognition of the tem-

EXPLANATION.—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

EXHIBIT V, ANNEXED TO COMPLAINT

A-7323-B

2

1 porary curtailment in federal subsidies and the uncertain avail-
2 ability of such assistance in the future.

3 § 2. Section three of section one of chapter one hundred seventy-
4 four of the laws of nineteen hundred sixty-eight, constituting the
5 New York state urban development corporation act, is hereby
6 amended by adding thereto a new subdivision to be subdivision six-
7 teen, to read as follows:

8 (16) "New community." A plan or undertaking for the devel-
9 opment of housing together with such civic, industrial and com-
10 mercial facilities and other ancillary facilities as the corporation
11 may determine necessary, including the implementation thereof
12 through one or more projects of the corporation and through such
13 participation by private enterprise as may be necessary or desirable
14 to carry out the development of such new community.

15 § 3. Section fifteen of such act is hereby amended by adding
16 thereto a new subdivision, to be subdivision five, to read as follows:

17 (5) Notwithstanding any inconsistent provision of this act or of
18 any general or special law, no plan for a proposed residential
19 project in a town or incorporated village which has not been
20 affirmed by the corporation prior to May first, nineteen hundred
21 seventy-three, shall be affirmed if, within thirty days after the
22 public hearing held pursuant to subdivision two of section sixteen
23 of this act or within thirty days after June first, nineteen hundred
24 seventy-three, whichever date is later, the local governing body
25 of such town or village submits in writing to the corporation formal
26 objections to the proposed residential project, unless and until such

EXHIBIT V, ANNEXED TO COMPLAINT

A-7323-B

3

1 objections are withdrawn and subject to the following conditions
2 and limitations:

3 (a) The foregoing shall not apply to residential projects initiated
4 after June first, nineteen hundred seventy-three, if such local gov-
5 erning body has, prior to submission, either approved such plan or
6 executed any agreement with the corporation relating to such plan
7 upon which the corporation has relied in authorizing expenditures
8 of funds or contracts, unless such town or village reimburses the
9 corporation for all of its expenditures and indemnifies the corpora-
10 tion for liabilities ensuing from cancellation of any contract, net of
11 the proceeds of any resale of property acquired by the corporation
12 for such project.

13 (b) The corporation may affirm, in any event, plans for residen-
14 tial projects in the new community known as Audubon, in the town
15 of Amherst, county of Erie or in the new community known as
16 Lysander New Community, in the town of Lysander, county of
17 Onondaga, and the provisions of this first paragraph of this sub-
18 division shall not be applicable to any of such projects.

19 § 4. Section eighteen of such act, as last amended by chapter
20 three hundred seventy-seven of the laws of nineteen hundred
21 seventy-two, is hereby amended to read as follows:

22 § 18. Bond authorization. The corporation shall not issue bonds
23 and notes in an aggregate principal amount exceeding ~~one~~ two
24 billion ~~five hundred million~~ dollars, excluding bonds and notes
25 issued to refund outstanding bonds and notes.

26 § 5. The sum of three million two hundred thousand dollars
27 (\$3,200,000) or so much thereof as may be necessary is hereby

EXHIBIT V, ANNEXED TO COMPLAINT

A-7323-B

4

- 1 appropriated from the capital construction fund to the New York
- 2 state urban development corporation for reimbursement to such
- 3 corporation of any actual net cost incurred by such corporation
- 4 with respect to residential projects which may be terminated. The
- 5 moneys hereby appropriated shall be available for such reimburse-
- 6 ments in accordance with a certificate of approval of availability
- 7 issued by the director of the budget and filed with the state comp-
- 8 troller, chairman of the senate finance committee and the chairman
- 9 of the ways and means committee.
- 10 § 6. This act shall take effect immediately.

EXHIBIT VI, ANNEXED TO COMPLAINT.

Urban Development Corporation—Residential Projects—
Disapproval

Memorandum relating to this chapter, see page 2346

CHAPTER 446

An Act to amend the New York state urban development corporation act, in relation to disapproval of residential projects by local governing bodies, increasing the bond authorization of the New York state urban development corporation and making an appropriation for losses incurred by the corporation in discontinuing projects.

Approved and effective June 5, 1973.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Statement of purpose and intent. The federal government has recently imposed a temporary moratorium on housing subsidies while various proposed revisions of national housing policy are being reviewed. This act is adopted in recognition of the temporary curtailment in federal subsidies and the uncertain availability of such assistance in the future.

§ 2. Section three of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight,¹ constituting the New York state urban development corporation act,² is hereby amended by adding thereto a new subdivision to be subdivision sixteen, to read as follows:

(16) "New community." A plan or undertaking for the development of housing together with such civic, industrial and commercial facilities and other ancillary facilities as the corporation may determine necessary, including the implementation thereof through one or more projects of the corporation and through such participation by private enterprise as may be necessary or desirable to carry out the development of such new community.

¹McK. Unconsol. Laws, § 6254.

²McK. Unconsol. Laws, §§ 6251 to 6255.

§ 3. Section fifteen of such act¹ is hereby amended by adding thereto a new subdivision, to be subdivision five, to read as follows:

(5) Notwithstanding any inconsistent provision of this act² or of any general or special law, no plan for a proposed residential project in a town or incorporated village which has not been affirmed by the corporation prior to May first, nineteen hundred seventy-three, shall be affirmed if, within thirty days after the public hearing held pursuant to subdivision two of section sixteen of this act³ or within thirty days after June first, nineteen hundred seventy-three, whichever date is later, the local governing body of such town or village submits in writing to the corporation formal objections to the proposed residential project, unless and until such objections are withdrawn and subject to the following conditions and limitations:

(a) The foregoing shall not apply to residential projects initiated after June first, nineteen hundred seventy-three, if such local governing body has, prior to submission, either approved such plan or executed any agreement with the corporation relating to such plan upon which the corporation has relied in authorizing expenditures of funds or contracts, unless such town or village reimburses the corporation for all of its expenditures and indemnifies the corporation for liabilities ensuing from cancellation of any contract, net of the proceeds of any resale of property acquired by the corporation for such project.

(b) The corporation may affirm, in any event, plans for residential projects in the new community known as Archibon, in the town of Amherst, county of Erie or in the new community known as Lysander New Community, in the town of Lysander, county of Oneida, and the provisions of this first paragraph of this subdivision shall not be applicable to any of such projects.

¹McK. Unconsol. Laws, § 6253.

²McK. Unconsol. Laws, §§ 6251 to 6255.

³McK. Unconsol. Laws, § 6256.

§ 4. Section eighteen of such act,¹ as last amended by chapter three hundred twenty-seven of the laws of nineteen hundred seventy-two, is hereby amended to read as follows:

Changes or additions in text are indicated by underline

EXHIBIT VI, ANNEXED TO COMPLAINT

§ 18. Bond authorization

The corporation shall not issue bonds and notes in an aggregate principal amount exceeding ~~one two billion five hundred million~~ one two billion dollars, excluding bonds and notes issued to refund outstanding bonds and notes.

¹McK.Unconsol.Laws, § 6268.

§ 5. The sum of three million two hundred thousand dollars (\$3,200,000) or so much thereof as may be necessary is hereby appropriated from the capital construction fund to the New York state urban development corporation for reimbursement to such corporation of any actual net cost incurred by such corporation with respect to residential projects which may be terminated. The moneys hereby appropriated shall be available for such reimbursements in accordance with a certificate of

approval of availability issued by the director of the budget and filed with the state comptroller, chairman of the senate finance committee and the chairman of the ways and means committee.

§ 6. This act shall take effect immediately.

ANSWER OF DEFENDANT LOUIS J. LEFKOWITZ, ATTORNEY GENERAL
OF THE STATE OF NEW YORK.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

Defendant, LOUIS J. LEFKOWITZ, Attorney General of
the State of New York, for his answer to the complaint
herein, respectfully alleges:

1. Denies each and every allegation contained in
paragraphs "1B", "62", "63", "68" and "69" thereof.
2. Denies knowledge or information sufficient to
form a belief as to each and every allegation contained
in paragraphs "2" through "9", "19" through "61" and
"64" through "67" thereof, inclusive, except as statutes,
officials records and other public records may otherwise
show.
3. Denies so much of paragraph "18" thereof as
alleges that the Attorney General is charged with enforcing
the laws of the State of New York and avers that the
powers and the duties of the Attorney General are set
forth in N.Y. Constitution, Article V, §§ 1, 3 and 4
and N.Y. Executive Law, Article 5 (§§ 60-74).

ANSWER OF DEFENDANT LOUIS J. LEFKOWITZ, ATTORNEY GENERAL
OF THE STATE OF NEW YORK

4. Upon information and belief, admits the identity and official character of the defendants named in paragraphs "10" through "17" thereof, inclusive and denies knowledge or information sufficient to form a belief as to each and every other allegation thereof, except as statutes, official records and other public records may otherwise show.

AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE.

5. This action is barred by the statute of limitations.

AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE AND
AS AND FOR A COUNTERCLAIM.

6. New York Laws of 1973, Chapter 446 is constitutional.

AS AND FOR A THIRD, SEPARATE AND COMPLETE DEFENSE.

7. The complaint fails to raise a substantial question within the jurisdiction of this Court.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE.

8. The complaint fails to state a claim upon which relief may be granted.

WHEREFORE, it is respectfully requested that the complaint be dismissed, or, in the event that the Court determine that a declaratory judgment is appropriate in

ANSWER OF DEFENDANT LOUIS J. LEFKOWITZ, ATTORNEY GENERAL
OF THE STATE OF NEW YORK

this action, that judgment be granted in his favor upon
his counterclaim.

Dated: New York, New York,
April 29, 1974.

LOUIS J. LEFKOWITZ,
Attorney General of the State
of New York
By

ROBERT S. HAMMER,
Assistant Attorney General,
Attorney for Defendant Pro Se,
Two World Trade Center,
New York, New York 10047
Tel. No. (212) 488-3394.

54a

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHETY, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS AND TOWN OF BABYLON.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

MARY JAMES, SAMMIE DORIS WILLOUGHBY, :
LUCIA SCIPP, on behalf of each and on :
behalf of all others similarly situated, :
and the WYANDANCH COMMUNITY DEVELOPMENT :
CORPORATION, :

Plaintiffs, :

- against - :

AARON BARNETT, Supervisor of the Town of :
Babylon; VINCENT MANNA, Councilman for the :
Town of Babylon; ROWLAND SCOTT, Councilman :
for the Town of Babylon; SONDRACHACHETY, :
Councilwoman for the Town of Babylon; PATRICK :
WATERS, Councilman for the Town of Babylon; :
RAY ALLMENDINGER, Councilman for the Town of :
Babylon; HAROLD WITHERS, Councilman for the :
Town of Babylon; TOWN OF BABYLON; LOUIS J. :
LEFKOWITZ, Attorney General of the State of :
New York, :

Defendants. :

----- X

ANSWER ✓

74 C 434

Chief Judge Mishler

Defendants AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHETY, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS, and TOWN OF BABYLON, for their answer to complaint herein, allege:

1. Admit the allegations of the first two sentences of paragraph 1 of the complaint and deny the remaining allegations of that paragraph.

2. Deny the allegations of paragraphs 2, 39, 40, 41, 42, 44, 45, 62, 63, 64, 65, 66, 67, 68 and 69 of the complaint.

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND
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3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 34, 35, 36, 48, 49, 50, 51, 53, 54 and 61 of the complaint.

4. Deny on information and belief the allegations of paragraphs 59 and 60 of the complaint.

5. With respect to the allegations of paragraph 10 of the complaint, admit the allegations of the first sentence, deny the allegations of the second sentence, and deny knowledge or information sufficient to form a belief as to the reasons for, manner of, and propriety of suing defendant Barnett as an individual.

6. With respect to the allegations of paragraph 11 of the complaint, admit the allegations of the first sentence, deny the allegations of the second sentence, and deny knowledge or information sufficient to form a belief as to the reasons for, manner of, and propriety of suing defendant Manna as an individual.

7. With respect to the allegations of paragraph 12 of the complaint, admit the allegations of the first sentence, deny the allegations of the second sentence, and deny knowledge or information sufficient to form a belief as to the reasons for, manner of, and propriety of suing defendant Scott as an individual, and deny that defendant Scott has any further official capacity in which to be sued.

8. With respect to the allegations of paragraph 13 of the complaint, admit the allegations of the first sentence and deny the allegations of the second sentence thereof.

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHET, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS AND TOWN OF BABYLON

9. With respect to the allegations of paragraph 14 of the complaint, admit the allegations of the first sentence, deny the allegations of the second sentence, and deny knowledge or information sufficient to form a belief as to the reasons for, manner of, and propriety of suing defendant Waters as an individual.

10. With respect to the allegations of paragraph 15 and 16 of the complaint, admit that defendants Allmendinger and Withers are presently Town Councilmen for the Town of Babylon, and deny that they participated in any official capacity in any of the events alleged in the complaint.

11. Deny the allegations of paragraph 17 of the complaint, except admit that the Town of Babylon is a municipal corporation of the State of New York, that its legislative body is the Town Board of the Town of Babylon, and that the individual defendants other than Attorney General Lefkowitz, (hereinafter "the individual defendants" are either now or have been members of the Town Board.

12. Deny so much of paragraph 18 of the complaint as alleges that the Attorney General is charged with enforcing the laws of the State of New York and allege that the powers and duties of the Attorney General are set forth in New York Constitution Article V, Sections 1, 3 and 4 and New York Executive Law, Article V, Sections 60-74.

13. Admit the allegations of the first sentence of paragraph 19 of the complaint and deny knowledge or information sufficient to form a belief as to the remainder thereof.

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14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the complaint, except admit that Exhibit I annexed to the complaint is a copy of a letter sent on or about June 9, 1971 by the then members of the Town Board of the Town of Babylon, and respectfully refer the Court to that letter for its content and effect.

15. Deny the allegations of paragraph 31 of the complaint, except admit that Exhibit II annexed to the complaint is a copy of a letter sent by defendant Barnett on or about September 29, 1971, and respectfully refer the Court to that letter for its content and effect.

16. Deny the allegations of paragraph 33 of the complaint, except admit that plaintiff Wyandanch Community Development Corporation and others selected a site in the vicinity of Commonwealth Drive and that the site was classified for single family residential development under the Zoning Ordinance of the Town of Babylon.

17. Deny the allegations of paragraph 37 of the complaint, except admit that the Urban Development Corporation conducted a public hearing on July 26, 1973 with respect to its proposed project in Wyandanch.

18. Deny the allegations of paragraph 38 of the complaint, and allege that the only formal action taken by the Town Board of the Town of Babylon with respect to the Wyandanch project was the passage of Resolution Number 8 of August 16, 1973, to which the Court is respectfully referred for its content, purpose and legal

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effect. A copy of that resolution is annexed hereto as Exhibit A.

19. Deny the allegations of paragraph 43 of the complaint, and allege that the action of the Town Board in passing Resolution Number 8 of August 16, 1973 was based upon information developed through the public hearing held by the Urban Development Corporation, through direct communications to the Town Board and through other information supplied to and available to the Town Board and otherwise brought to the Board's attention. The action of the Town Board of the Town of Babylon in passing Resolution Number 8 of August 16, 1973 was based on lawful, proper and legitimate concerns and considerations falling within the constitutional and statutory powers granted to and guaranteed to the Town Board by the laws of the State of New York and of the United States. The subject property is not physically suited to the proposed project and the subject community is not economically suited to the proposed project.

20. Deny the allegations of paragraph 46 of the complaint, but for a complete statement of the creation, purposes and powers of the New York State Urban Development Corporation respectfully refer the Court to the New York State Laws of 1968, Chapter 174 and to the memorandum of the Governor accompanying that legislation upon its introduction into the New York State Legislature.

21. Deny the allegations of the first sentence of paragraph 47 of the complaint, and respectfully refer the Court to the statute (Laws of 1968, Chapter 174) for a correct statement of the powers of the Urban Development Corporation, and deny knowledge or

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHETY, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS AND TOWN OF BABYLON

information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 47.

22. Deny the allegations of paragraphs 52, 55, 56, 57 and 58 of the complaint, except admit that in 1973 Assembly Bill Number 7323-A was introduced into the Legislature and was ultimately enacted into law as Chapter 446 of the New York Laws of 1973, and respectfully refer the Court to Chapter 446 for its provisions and effect.

FIRST DEFENSE AND
FIRST COUNTERCLAIM

23. Defendant Town of Babylon is a municipal corporation whose legislative body is the Town Board of the Town of Babylon.

24. Defendants Barnett, Manna, Scott, Bachety, Waters, Allmendinger and Withers (hereinafter the individual Babylon defendants) are present or former members of the Town Board of the Town of Babylon.

25. The public policy of the State of New York as expressed in its constitution, statutes and court decisions is to grant extensive "home rule" powers to the component municipal corporations of the State for the purpose of permitting a maximum of self government and self determination by the locally elected representatives of the residents and taxpayers of the local areas which are most directly affected by the governmental decisions and policies made by such local legislative bodies.

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26. Under the laws of the State of New York, municipal corporations such as the Town of Babylon are entrusted with extensive powers and responsibilities in the areas of taxation, land use planning, zoning, building regulation, regulation of businesses, providing municipal services, providing recreational facilities, and in many other areas of governmental activity, the exercise of which powers and responsibilities have a direct and important impact on the lives of its residents and taxpayers.

27. The individual defendants were elected by the voters of the Town of Babylon to exercise their best judgment and discretion upon all matters coming within the jurisdiction of the Town Board of the Town of Babylon.

28. Despite disagreements among them on occasion, the individual defendants have at all times acted with the utmost good faith to achieve what each of them perceives to be the best interests of the residents and taxpayers of the Town.

29. In the present case, none of the individual defendants was motivated by considerations of race or of discrimination against any class or group.

30. The action of the Town Board in passing Resolution Number 8 of August 16, 1973

(a) was not racially motivated;

(b) was based upon proper and legitimate areas of concern falling within the powers and jurisdiction of the Town Board;

(c) was reasonably grounded in fact; and

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHET, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS AND TOWN OF BABYLON

(d) did not constitute a discriminatory housing practice under Title 42 U.S.C. Section 3601 et seq.

31. The mere bringing of this action, based upon the "Civil Rights Law", against the individual defendants constitutes an incompensable injury to them in their official positions and in the eyes of their constituents.

32. Mere dismissal of the complaint against the individual defendants would not be adequate relief for them.

33. A declaratory judgment is sought in favor of the individual defendants exonerating them from the claims of discriminatory action set forth in the complaint and declaring that the action of the Town Board taken on August 16, 1973

(a) was not racially motivated;

(b) was not intended to discriminate against any group or class;

(c) was a proper and reasonable exercise of the legislative discretion granted to them by New York State law; and

(d) was based upon reasonable, proper, legal and constitutional grounds falling within the scope of the powers granted to local town and village governments in the State of New York.

SECOND DEFENSE AND
SECOND COUNTERCLAIM

34. This counterclaim is brought to declare constitutional and valid the amendment to the Urban Development Corporation Act which

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is known as New York Laws of 1973, Chapter 446.

35. The Town of Babylon is one of 931 towns which are municipal corporations in the State of New York.

36. There are 555 incorporated villages which are municipal corporations in the State of New York.

37. All of these towns and villages, including defendant Town of Babylon, have been granted similar "home rule" powers by the New York State Constitution and the statutes relating to the government, regulation, development, and control of the areas within their respective boundaries.

38. Among the powers which said towns and villages regard as vital to their continued effective performance of their functions in the governmental framework established by the State of New York are those powers relating to planning, zoning, regulation and control of land use and development, subdivision regulation, and related functions.

39. Defendant Town of Babylon brings this counterclaim as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on its own behalf and on behalf of all other towns and villages in the State of New York who are similarly situated.

40. As to the class described above;

(a) The number of members is so great as to make joinder of all members of the class impractical;

(b) There are questions of law and fact common to the

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class, namely whether it is unconstitutional for the New York State Legislature to permit towns and villages to file objections to residential projects proposed by the New York State Urban Development Corporation as a limitation on that corporation's statutory power to override local zoning and building regulations;

(c) The claims of the counterclaiming defendant Town of Babylon are typical of the claims of the class;

(d) The defendant Town of Babylon will fairly and adequately protect the interests of the class as it seeks no individual benefit from this counterclaim, but only a class benefit;

(e) The plaintiffs by this action have attacked the validity of a statute whose benefit was intended by the New York State Legislature to extend to all members of the class, and the counterclaiming defendant Town of Babylon seeks to confirm and sustain the validity of that statute;

(f) Questions of law and fact common to the members of the class predominate in this counterclaim over any questions affecting only individual members; and

(g) A class action is superior to other available methods for the fair and efficient adjudication of this counterclaim.

41. Counterclaiming defendant Town of Babylon alleges that:

(a) The members of the class have no interest in individually controlling prosecution of separate actions pertaining to the controversy involved here;

(b) There is no other litigation known to it which has already been commenced concerning the controversy involved here;

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHET, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS AND TOWN OF BABYLON

(c) If the Court takes jurisdiction of the constitutional issue, it would be desirable to concentrate litigation of the claims in this counterclaim in this forum in order to insure a prompt, consistent resolution of this matter to make clear throughout the State of New York the correct balance of power among the New York State Legislature, the New York State Urban Development Corporation and the incorporated towns and villages throughout New York State, and to clarify for the many communities throughout the State the extent of their power and authority to determine their own destinies and development under the laws and constitutions of the State of New York and of the United States; and

(d) That there are no foreseeable difficulties likely to be encountered in the management of a class action.

42. The New York State Urban Development Corporation was created by act of the Legislature of the State of New York (NY Laws of 1968, Chapter 174). Its existence, its funds, and its powers are all creatures of statute. The UDC derives no authority or power from the constitution of the State or of the United States.

43. Having by statute granted to UDC its powers, the Legislature of the State of New York may by similar statutory enactment repeal, restrict, limit or condition the exercise of any of those powers.

44. The enactment by the New York State Legislature of Chapter 446 of the Laws of 1973 was within its constitutional power, did not infringe upon any provisions of the constitutions of the

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State or of the United States, and was a reasonable, proper and presumptively valid exercise of the legislative power of that body.

45. In enacting New York Laws of 1973, Chapter 446, the New York State Legislature did not act with a purpose to be racially discriminatory or to discriminate against the poor or against any other group or class.

46. Chapter 446 of the 1973 Laws of the State of New York is not in its effect racially discriminatory or discriminatory against the poor or against any other group or class and does not deny any group any rights secured to them by any statute of the United States or the State of New York or by any provision of the Constitutions of the United States or of the State of New York.

47. Chapter 446 of the New York State Laws of 1973 is constitutional.

THIRD DEFENSE

48. The action of the Town Board of the Town of Babylon in passing Resolution Number 8 of August 16, 1973 was taken in good faith, was based upon the sound legislative judgment and discretion of a majority of the board members, and was grounded on sincere and legitimate concerns which are charged and granted by law to the official powers and responsibilities of the Town Board in its capacity as the legislative body of the Town of Babylon.

FOURTH DEFENSE

49. The actions by the Town of Babylon and by the indi-

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vidual defendants as described in the complaint were taken in good faith, without malice, without thought of personal gain, without intent to injure, and without intent or desire to cause any person harm or to deprive any person of any rights.

50. The actions taken by the individual defendants as described in the complaint were taken by each of said individual defendants in the best interests of the residents and taxpayers of the Town of Babylon as each of said individual defendants perceived those interests.

51. As a matter of law and public policy the individual defendants and the Town of Babylon are immune from civil actions of the type attempted to be set forth in the complaint.

FIFTH DEFENSE

52. The action of the Town Board of the Town of Babylon which is complained of was taken on August 16, 1973.

53. The present litigation was not commenced until March 18, 1974.

54. Insofar as the complaint is based on Title 42 U.S.C. Sections 3601 et seq., it is barred by the 180 day statute of limitations contained in Section 3612.

SIXTH DEFENSE

55. None of the actions complained of by the plaintiffs constitutes a discriminatory housing practice within the meaning of

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Title 42 U.S.C. Sections 3601 et seq.

56. The complaint does not set forth facts sufficient
to constitute a cause of action or any claim for relief under 42
U.S.C. Sections 3601 et seq.

SEVENTH DEFENSE

57. The complaint fails to raise a substantial question
within the jurisdiction of this Court.

EIGHTH DEFENSE

58. The complaint does not state facts sufficient to
constitute a cause of action or claim for damages against any
defendant.

NINTH DEFENSE

59. The complaint fails to state a claim or cause of
action upon which any relief may be granted.

TENTH DEFENSE ON BEHALF OF DEFENDANTS
BARNETT, MANNA AND SCOTT

60. The complaint does not state facts sufficient to
constitute a cause of action against defendants Barnett, Manna and
Scott individually.

ELEVENTH DEFENSE ON BEHALF OF DEFENDANTS
SCOTT AND WATERS

61. Defendants Scott and Waters no longer have any
official capacity in which to be sued, their terms on the Town

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Board of the Town of Babylon having expired.

TWELFTH DEFENSE

62. The statute sought to be declared unconstitutional (New York Law of 1973, Chapter 446) has not been construed or interpreted by the higher Courts of the State of New York.

63. The United States District Court should abstain from exercising jurisdiction in this action until the true meaning and intent of the statute has been determined by the New York State courts.

THIRTEENTH DEFENSE

64. Defendants have no standing or capacity to maintain this action.

FOURTEENTH DEFENSE

65. This case is not an appropriate one for review by a three judge court as claimed under paragraph 4 of plaintiffs' WHEREFORE" clause.

WHEREFORE defendants Barnett, Manna, Scott, Bachety, Waters, Allmendinger, Withers and the Town of Babylon pray for the following relief:

A. Dismissal of the complaint on the ground that the Court should not entertain jurisdiction of this state matter; or

B. In the event that the Court does entertain jurisdiction of the action, dismissal of the complaint on the merits; and

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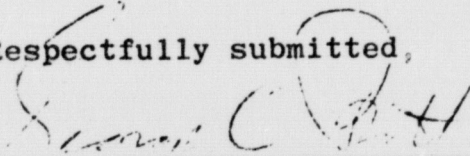
C. A declaratory judgment on the first counterclaim declaring the matters requested therein; and

D. A declaratory judgment on the second counterclaim declaring New York State Laws of 1973, Chapter 446 constitutional and valid; and

E. Granting such additional relief as to the Court may seem just and proper.

Dated: May 17, 1974
Williston Park, N.Y.

Respectfully submitted,


George C. Pratt

PRATT, CAEMMERER & CLEARY, P.C.
374 Hillside Avenue
Williston Park, N.Y. 11596
516 741 1111

Trial Counsel to

JOSEPH F. KLEIN
Babylon Town Attorney
200 East Sunrise Highway
Lindenhurst, New York 11757
516 888 7300

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHETY, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS AND TOWN OF BABYLON

RESOLUTION NO. 8 AUGUST 16, 1973
FILING OBJECTIONS TO URBAN DEVELOPMENT
CORP. WYANDANCH PROJECT.

The following resolution was offered by Councilman
Manna and seconded by Councilman Scott

WHEREAS, the New York State URBAN DEVELOPMENT CORP. has held a Public Hearing July 26, 1973, and the Town has received copies of the transcript of said hearing on the proposed project and said URBAN DEVELOPMENT CORP. is awaiting response from the Town, pursuant to the provisions of law in Chapter 446 of the Laws of 1973, et al,

NOW, THEREFORE, be it

RESOLVED, that the Town Clerk is hereby directed to file a copy of this resolution with the New York State Urban Development Corp. to put them on notice of the Town's formal objections to the proposed residential project and, be it further

RESOLVED, that such formal objections include, among others, the following:

1. Under its by-laws, the UDC makes no provision to pay for the County Police tax, Fire District tax, District Court tax and many other items that should be attributed to the Commonwealth Drive project. If the UDC, SCDC, or WCDC will not pay these taxes, the rest of the Town of Babylon would have to pick up the slack. This would mean a definite tax increase.

2. The UDC states that the Commonwealth Drive Housing project would generate the total sum of \$34,000 to the Town of Babylon in lieu of taxes. The project would be located on an 11.7 acre tract of land. That land, zoned for single residence dwellings, would result in a total of more than \$60,000 in tax money to the Town. This parcel of land could

ANSWER OF DEFENDANTS AARON BARNETT, VINCENT MANNA, ROWLAND SCOTT, SONDRACHACHETY, PATRICK WATERS, RAY ALLMENDINGER, HAROLD WITHERS AND TOWN OF BABYLON

generate more than a quarter of a million dollars to the Town every year, but not if the project were allowed to exist.

3. In an official statement, the UDC claimed that the proposed 182-Unit complex would only generate some 134 children into the Wyandanch School District. Statistics show that the average "low-income" family has slightly more than 3 children per family. Using this guideline, it is reasonable to assume that an additional 550 children would be added to the rolls of the Wyandanch School system. Wyandanch Schools are already suffering from severe overcrowding, and the school system is currently on an austerity plan. An extra 550 students would be a crushing blow to an already over-burdened school system. The end result would be an education considerably lower than acceptable standards.

4. Statistics claim that there are currently 41 sub-standard dwellings in the Hamlet of Wyandanch. The UDC is calling for 182 units of housing. If, in fact, the occupants of the 41 dwellings agree to relocate in the Commonwealth Drive project, it would appear that the vast majority of tenants in the remaining 141 units would come from outside the Wyandanch area, and quite possibly outside Suffolk County, turning Wyandanch into a severely blighted area, adding to Wyandanch's current economic problems.

5. There is no way to gauge how many of the occupants of the aforementioned 41 sub-standard housing units will be willing to relocate in the proposed project. The distinct possibility exists that some of these residents will not move into this new project.

6. The UDC is willing to spend an average of \$30,000 on every unit in the Commonwealth Drive project while less than one-tenth of that money would be needed to fix the existing problems without erecting this project, and save the residents of New York State a considerable amount of money.

7. The Town of Babylon, and all of Suffolk County is experiencing a water problem. The water level has risen to unexpected heights. On Commonwealth Drive, in the Hamlet of Wyandanch, the ground water level has risen 15 feet above normal.

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This is, quite naturally, creating a problem with basement flooding. Under single residence zoning, a total of 44 homes could be constructed on the site chosen for the Commonwealth Drive project. These homes would cause a significant increase in the present ground water level, therefore, 182 units on the same acreage would result in the problem increasing several fold.

8. The UDC has chosen Wyandanch as the area for this predominantly low-income project. The fact remains that Wyandanch currently houses more than 30% of Suffolk County's welfare recipients. The addition of 182 units would further add to the economic blight of Wyandanch, and the Town of Babylon. With the approval of this project, it would be safe to assume that in one Hamlet of Suffolk County there would reside over one-third of the entire welfare dependent individuals in Suffolk County.

ROLL CALL

VOTES:

COUNCILMAN WATERS: No

COUNCILMAN SCOTT: Yes

COUNCILMAN BACHETY: No

COUNCILMAN MANNA: Yes

SUPERVISOR BARNETT: Yes

The resolution was thereupon declared duly adopted.

DATED: TOWN OF BABYLON, NEW YORK
AUGUST 16, 1973.

NOTICE OF MOTION FOR A DECLARATION OF CLASS ACTION.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

SIRS:

PLEASE TAKE NOTICE that upon the complaint filed in this action, the accompanying memorandum of law and all other documents filed herein, the plaintiffs will move this Court, before the Honorable Chief Judge Jacob Mishler, at the United States Court House, 225 Cadman Plaza East, Brooklyn, New York, on the 21st day of June, 1974, at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, for a determination pursuant to Rule 23, of the Federal Rules of Civil Procedure and Rule 11A of the Civil Rules for the Southern and Eastern Districts of New York:

1. That this action is maintainable as a class action; and
2. If maintainable as a class action, for a determination of the membership of the class.

NOTICE OF MOTION FOR A DECLARATION OF CLASS ACTION

And for such other determinations as are just and equitable under the circumstances.

Dated: May 29, 1974.

RICHARD BELLMAN
CHRISTOPHER JENSEN
LOIS D. THOMPSON
Suburban Action Institute,
150 White Plains Road,
Tarrytown, N.Y. 10591
(914) 631-8321.

ARTHUR EISENBERG
LAWRENCE G. SAGER
BRUCE J. ENNIS
New York Civil Liberties Union,
84 Fifth Avenue,
New York, N.Y. 10011
(212) 924-7800
Attorneys for Plaintiffs.

TO: Clerk of the Court,
United States Court House,
Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, N.Y. 11201

Pratt, Caemmerer & Clearly, P.C.,
374 Hillside Avenue,
Williston Park, N.Y. 11596
Att: George C. Pratt

Robert S. Hammer,
Assistant Attorney General
Two World Trade Center,
New York, N.Y. 10047

AFFIDAVIT OF GEORGE C. PRATT IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

MARY JAMES, et al, : 74 C 434

Plaintiffs, : AFFIDAVIT IN OPPOSITION

- against - : TO MOTION

AARON BARNETT, et al, :

Defendants. :

-----X

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

GEORGE C. PRATT, being duly sworn, deposes and says:

1. I am attorney with Pratt, Caemmerer & Cleary, P.C. who are trial counsel for Joseph F. Klein, the Babylon Town Attorney, representing all of the defendants in this action except Louis J. Lefkowitz, the Attorney General of the State of New York.

2. This affidavit is submitted in opposition to plaintiffs' motion for an order determining that this action is maintainable as a class action.

3. The purpose of the affidavit is to bring before the Court certain essential elements which were contained in the proposal for the Wyandanch housing project which was submitted by the New York State Urban Development Corporation to the Babylon

AFFIDAVIT OF GEORGE C. PRATT IN OPPOSITION TO MOTION

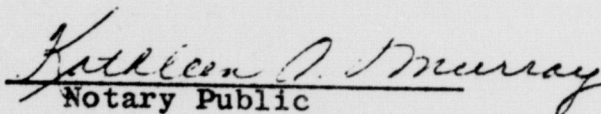
Town Board. One of the key issues in this case is whether the Town Board's resolution disapproving that proposed project was valid and constitutional.

4. The complaint describes the UDC proposal in some detail at ¶¶26 through 37 inclusive. Omitted from the complaint, however, are UDC's own explanations as to its rental plan and the tenant priorities to be established for the project.

5. Annexed to this affidavit is page 5 from the section of the UDC's submission labeled "The Proposal". Marked in brackets are those portions of UDC's proposal which I respectfully wish to bring to the Court's attention. The significance of these sections is discussed in the Town's memorandum to be submitted on the argument of this motion.


George C. Pratt

Sworn to before me this
10th day of July, 1974.


Notary Public

KATHLEEN A. MURRAY
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-4095460
Qualified in Nassau County
Commission Expires March 30, 1975

Allen and Grant. This test confirms that there is adequate water pressure to serve and protect the development. The Suffolk County Water Authority concurs in their findings.

RENTALS

Exact rentals can be determined only after all development costs are computed. However, tenants will pay approximately 25% of their net incomes in rent. This includes utilities.

The Federal FHA "236" mortgage interest subsidy program, or its equivalent, will be applied for in order to reduce the rents to a range that moderate income families can afford.

In order to further reduce rents so those with low incomes can afford them, funds will be sought under the Rent Supplement Program.

Although the goal of UDC is to have an income mix of 20% low income families, 70% moderate income families and 10% elderly, the exact percentage of low income households depends upon the availability of federal subsidies for this purpose.

The chart below is an estimate of the approximate monthly rentals which includes heat, light, water and parking.

Apartment Size	236 Estimated Rents			Rent Supplement	
	Regular Income Program	Exception Income Program*	Program Rent	Program Rent	Program Rent
Efficiency	Basic \$114	Max \$126	Basic —	Max —	Average \$34-49
1-Bedroom	\$137	\$151	—	—	—
2-Bedroom	\$152	\$168	\$223	\$248	—
3-Bedroom	\$162	\$180	—	—	—
4 or 5 Bedroom	—	—	—	—	\$86-99

*In certain high cost construction areas the federal government also sets exception limits that can be applied which increase the allowable income limits. These "exception income" rents will apply only to 40 two bedroom units.

TENANT PRIORITIES

It is a state and federal requirement that rental priority be given to those persons displaced by government action and to veterans of the Vietnam war period.

Therefore priorities will be as follows:

Residents of Wyandanch who have been displaced by government action.

Residents of Wyandanch who are veterans of the Vietnam War.

Residents of Wyandanch, now living in unsound, unsafe and substandard housing that is deemed detrimental to the health and welfare of the inhabitants.

Other residents of Wyandanch.

Residents from outside the Wyandanch planning area will be selected only if the above categories are exhausted.

TENANT INCOME ELIGIBILITY

In developments receiving federal subsidies, income limits are set by the U.S. Department of Housing and Urban Development.

These income limits vary with family size and location. The following table for Suffolk County includes both the federally established net and gross income levels. Gross incomes under the "236" program are calculated by multiplying net income by 1.05 and adding \$300 for each child in the family. Gross incomes under the Rent Supplement program are calculated by adding \$300 for each child.

MEMORANDUM OF DECISION AND ORDER.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -x

MARY JAMES, et al.,

No. 74-C-434

Plaintiffs,

- against -

Memorandum of Decision
and Order

AARON BARNETT, et al.,

Defendants.

August 15, 1974

- - - - -x

This action concerns the proposed construction of 182 housing units for low and moderate income families in the unincorporated hamlet of Wyandanch which is located within the town of Babylon, New York. The proposed housing development was to have been jointly sponsored by the New York State Urban Development Corporation (UDC), the Suffolk County Development Corporation (SCDC) and the Wyandanch Community Development Corporation (WCDC).^{/1} On August 16, 1973, however, the Town

^{/1} The complaint alleges that the Wyandanch Community Development Corporation is a non-profit corporation "dedicated to the solution of the acute social, economic and physical problems within Wyandanch, and, in particular, Wyandanch's housing deficiencies." (Complaint ¶6).

MEMORANDUM OF DECISION AND ORDER

Board of Babylon exercised its statutory veto power over the proposed housing units.^{/2} Plaintiffs, WCDC and three individuals representing black Americans of moderate and low incomes presently residing in Wyandanch, commenced this action against the Supervisor of the Town of Babylon, six Babylon councilmen,^{/3} the Attorney General of the State of New York, and the Town of Babylon, seeking the following declaratory relief:^{/4}

A. That the veto of the Wyandanch Housing proposal by the Town Board of Babylon was racially discriminatory in purpose and effect, was unsupported by any legitimate

^{/2} Ch. 446, §3 [1973] N.Y. Laws 894.

^{/3} Barnett and two Councilmen, Manna and Scott, are sued individually and in their representative capacity. Councilwoman Bachety and Councilman Waters voted for approval of the proposition and are sued only in their representative capacity. Councilmen Allmendinger and Withers were not members of the Board at the time of the voting. They are presently members of the Board and are sued in their representative capacity.

^{/4} Plaintiffs' demand for injunctive relief was withdrawn.

MEMORANDUM OF DECISION AND ORDER

governmental interest, and denied Plaintiffs and members of their class rights secured to them by the Fourteenth Amendment to the United States Constitution and various federal statutes intended to secure their civil rights; and

B. That Chapter 446, 1973 Laws of New York State, insofar as it gives Towns and Villages the right to arbitrarily veto proposed projects of the New York State Urban Development Corporation violates the same constitutional and statutory provisions in its purpose, effect and operation.

(Complaint ¶1).

The history of and need for the proposed housing development are related in detail in the complaint. Seventy-six percent of the black (and poor) population of Babylon resides in Wyandanch and North Amityville. Housing conditions in Wyandanch are allegedly deplorable. A report prepared by the Suffolk County Department of Health and the 1970 Master Plan for the Town of Babylon both singled out the Commonwealth Drive area (the location of the proposed housing development) as one of the most blighted in Wyandanch and called for redevelopment and rehabilitation. (Complaint ¶25).

WCDC (and its predecessor, Wyandanch Task Force) initiated and developed plans for the housing development. A professional housing study was conducted by the planning and consulting firm of Raymond, Parish and Pine/was submitted to the Babylon Town Board in May, 1971. On June 9, 1971. the

MEMORANDUM OF DECISION AND ORDER

Board, in a letter signed by defendant Aaron Barnett (Town Supervisor) and by defendants Bachety, Schaeffer, Scott and Waters (Councilmen), stated that it was "favorably impressed and pleased with the progress you are making in your self-help program," and suggested that Reverend David Rooks, Chairman of WCDC, keep the Board "advised from time to time with updated reports of your activities and progress." In September 1971, Rev. Rooks advised Barnett of WCDC's intention to build approximately 200 housing units on a twelve acre site within the Commonwealth Drive area. On September 29, 1971, Barnett responded, informing Rev. Rooks that "this Commonwealth Housing Proposal in no way conflicts with any present plans within the Town of Babylon," and suggesting the use of the Town power of condemnation to acquire land within the proposed twelve acre site. UDC and SCDC then executed a letter of agreement setting out their mutual intention to cooperate in the development of housing and related facilities in Wyandanch. A specific site was selected for the proposed housing complex in the Commonwealth Drive area and the architectural firm of Gindele and Johnson was retained. In accordance with the New York Urban Development Corporation Act, the Board of Directors of UDC approved the plans on

MEMORANDUM OF DECISION AND ORDER

September 20, 1972. A statutorily prescribed public hearing was conducted by UDC on July 26, 1973. An overwhelming majority of the residents of Wyandanch present at the meeting supported the proposed housing development.

On June 5, 1973, the New York Urban Development Corporation Act was amended to give towns and incorporated villages the power to veto proposed residential projects within thirty days of the public hearing. Ch. 446, §3 [1973] N.Y. Laws 894. The Babylon Town Board on August 16, 1973 exercised its authority pursuant to chapter 446 and voted three to two to disapprove the Commonwealth Drive Residential Development Proposal.

The only question before the court at this time is one of class action status. Plaintiffs have moved pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure^{/5} for an

^{/5} F.R.Civ.P. 23(c)(1) provides in part that:

As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. . . .

MEMORANDUM OF DECISION AND ORDER

order determining that the action may be maintained as a class action and determining the members of the class. Defendants (except Louis J. Lefkowitz, the Attorney General of the State of New York) oppose the plaintiffs' motion for class action status on the grounds that (1) the class action device is not necessary for the determination of plaintiffs' claims; and (2) even if class action status is appropriate, the individual plaintiffs do not represent the interests of those most affected by the veto.

Defendants argue that since this action involves basically one claim challenging the constitutionality of a single determination by a public body, class action status is inappropriate and unnecessarily cumbersome. The Advisory Committee's Notes to Rule 23, however, explicitly recognize that civil rights actions in which "a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration" are within the scope of subdivision (b)(2) of Rule 23.^{/6} Moreover, courts

^{/6} F.R.Civ.P. 23(b)(2) provides as follows:

An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

. . .

MEMORANDUM OF DECISION AND ORDER

have consistently treated actions challenging racial discrimination in housing as 23(b)(2) actions. See, e.g., Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968); Davis v. City of Toledo, 54 F.R.D. 386 (N.D. Ohio 1970).

Defendants further contend that even if this action is appropriate in the instant case, the individual named plaintiffs do not represent the interests of those truly affected by the veto. Defendants point out that the plans as approved by UDC provide for the allocation of housing units in accordance with the following priorities:

1. Residents of Wyandanch who have been displaced by government action;
2. Residents of Wyandanch who are veterans of the Vietnam War;
3. Residents of Wyandanch now living in unsound, unsafe and substandard housing that is deemed detrimental to the health and welfare of the inhabitants; and
4. Other residents of Wyandanch.

/6 Cont.

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole

MEMORANDUM OF DECISION AND ORDER

The UDC proposal also provided for the allocation of housing units according to a specified "income mix":

Although the goal of UDC is to have an income mix of 20% low income families, 70% moderate income families and 10% elderly, the exact percentage of low income households depends upon the availability of federal subsidies for this purpose.

The priority given to displaced residents and Vietnam War veterans does not alter the thrust of the claim of racial discrimination. The overwhelming black population in the affected area rules out the probability of the assignment of whites in those priority classifications to apartments in the proposed development.

The action is maintainable as a class action. The court finds that the plaintiffs meet the requirements of Rule 23(a)¹⁷ and that the claims alleged in the complaint fall within the scope of Rule 23(b)(2). The class is

¹⁷ The court finds that:

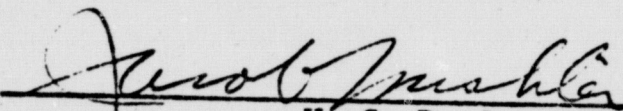
(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

F.R.Civ.P. 23(a).

MEMORANDUM OF DECISION AND ORDER

composed of black residents of Wyandanch who are or who would be eligible for the low and moderate income units in the proposed Wyandanch housing development as defined in the applicable state or federal statutes or regulations.¹⁸

SO ORDERED.


U. S. D. J.

¹⁸ There is no need for representation of the elderly. The alleged discriminatory action was not based on age. If the action of the Town Board adversely affected plaintiff Mary James' right to decent housing, it was because of her race and not her age.

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----- X

MARY JAMES, et al,	:	File Number 74-C-434
Plaintiffs,	:	<u>NOTICE OF APPEAL</u>
-against-	:	
AARON BARNETT, et al,	:	
Defendants.	:	

----- X

Notice is hereby given that Aaron Barnett, et al, defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from each and every provision of the order granting class action status to plaintiffs entered in this action on the 15th day of August, 1974.

Dated: September 12, 1974

/s/

Attorney for Defendants
Pratt, Caemmerer & Cleary, P.C.
374 Hillside Avenue
Williston Park, N. Y. 11596

UNITED STATES COURT OF APPEALS :: FOR THE SECOND CIRCUIT

MARY JAMES , SAMMIE DORIS WILLOUGHBY, et al

Plaintiffs-Appellees

v.

AARON BARNETT,... TOWN OF BABYLON, et al

Defendants-Appellants

LOUIS J. LEFKOWITZ, Attorney General of the State of New York
DefendantAFFIDAVIT
OF SERVICESTATE OF NEW YORK,
COUNTY OF New York

, ss:

Bernard Greenberg

being duly sworn,

deposes and says that he is over the age of 21 years and resides at 162 East 7th St.

New York, N. Y.

3 New York

That on the 26th day of November 1974 at 3 New York
 he served the annexed Joint Appendix in the above case
 upon
 Attorneys for Mary James, Sammie
 Doris /Willoughby, et al
 Plaintiffs-Appellees
 three copies each true cop thereof.

in this action, by delivering to and leaving with said
 Arthur Eisenberg, Lawrence G. Sager, Bruce Ennis

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the
 person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 26th

day of November 1974 }

Roland W. Johnson
 ROLAND W. JOHNSON
 Notary Public, State of New York
 No. 4509105
 Qualified in Delaware County
 Commission Expires March 30, 1975

Bernard Greenberg

United States Court of Appeals

376-Affidavit of Service by Mail

for the Second Circuit

The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

Mary Jammes, Simmie Doris Willoughby, Lucia Scipp,
on Behalf of each and on behalf of all others similarly
Situating, and the Wyndanch Community Development Corporation

Plaintiffs-Appellees

against

Aaron Barnett, et al.

Defendants-Appellants

Louis J. Lefkowitz, Attorney General of the State of New York

Defendant

AFFIDAVIT
OF SERVICE
BY MAIL

State of New York, County of New York

ss.:

Raymond J. Braddick, being duly sworn deposes and says that he is
agent for Eugene C. Pratt Esq the attorney for the above named
Defendants-Appellants herein. That he is over 21 years
of age, is not a party to the action and resides at Levittown, New York

That on the 26th day of November, 1974, he served the within

Brief and Appendix
attorney for the above named Plaintiff-Appellee

by depositing 3 copies to each of the same securely enclosed in a post-paid wrapper
in the Post Office regularly maintained by the United States Government at
90 Church Street, New York, New York

directed to the said attorney for the Plaintiff
at No. 150 White Plains Road, Tarrytown,

N. Y., that being the address within the state designated by them for that purpose, or the
place where they then kept an office, between which places there then was and now is a regular
communication by mail.

Sworn to before me, this 26th.
day of November 1974

ROLAND W. JOHNSON
Notary Public, State of New York
No. 43070
Qualified in Delaware County
Commission Expires March 30, 1977

Raymond J. Braddick